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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,569	10/06/2003	Carlos E. Collazo	OSTEONICS 3.0-456	3144
530 7590 08/26/2010 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER CARTER, TARA ROSE E	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 08/26/2010	DELIVERY MODE PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CARLOS E. COLLAZO

Appeal 2009-009145
Application 10/679,569
Technology Center 3700

Before: LINDA E. HORNER, JOHN C. KERINS, and
STEVEN D.A. MCCARTHY, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Carlos E. Collazo (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 12-16, 18, and 20-24, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

THE INVENTION

Appellant's claimed invention is a reamer bushing for progressively enlarging a bore in a bone canal during orthopedic surgery. Spec. 1, para. [0001]. Claim 12, reproduced below, is representative of the subject matter on appeal.

12. A reamer bushing mounted in a fixture adapted for being aligned with a bone canal, the bushing for use with at least two different diameter rotatable bone reamers, the reamers each having a plurality of longitudinal flutes extending from an inner shaft, outer radial ends of the flutes defining the reamer diameter, the bushing comprising:

a body with an outer bearing surface for rotatably engaging a surface of the fixture in which the bushing is mounted;

a longitudinal bore formed in the body for receiving the inner shaft of the reamer; and

a plurality of recesses extending radially outward of said bore and open thereto, each recess for receiving at least one of said plurality of flutes of said bone reamers.

THE REJECTIONS

Appellant seeks review of the following decisions by the Examiner:

1. Rejection of claims 12-16, 18, and 20-22 under 35 U.S.C. § 102(b) as anticipated by Cenis (US 3,981,604).
2. Rejection of claims 12-14, 18, and 20-22 under 35 U.S.C. § 102(e) as anticipated by Ball (US 2003/0163151 A1).

3. Rejection of claims 23 and 24 under 35 U.S.C. § 103(a) as unpatentable over *Cenis*.

ISSUES

Does *Cenis* disclose a reamer bushing “body with an outer bearing surface for rotatably engaging a surface of the fixture in which the bushing is mounted”?

Does *Ball* disclose a reamer bushing mounted in a fixture capable of use with bone reamers?

ANALYSIS

Rejection of claims 12-16, 18, and 20-22 as anticipated by Cenis

Claim 12 recites a reamer bushing mounted in a fixture, the reamer bushing having a “body with an outer bearing surface for rotatably engaging a surface of the fixture in which the bushing is mounted.” The Examiner interprets this as functional language so that all that the prior art need disclose is a reamer bushing capable of rotationally engaging a fixture. Ans. 4-5, 8-12. Using this interpretation, the Examiner found that *Cenis* discloses a reamer bushing capable of such use. Ans. 6.

Cenis discloses a liner bushing capable of two uses: one, as a bushing 11, adapted to receive and hold a slip renewable bushing 13; and two, as a bushing 12, adapted for receiving a locating pin 15. *Cenis*, col. 2, ll. 59-61, 66-68; col. 3, ll. 11-14; fig. 1. *Cenis* discloses that liner bushing 11 is held in a plate 14 by adhesive 14a on the outer surface of bushing 11, and liner bushing 12 is held in plate 14 by a press fit. *Cenis*, col. 2, ll. 61-62, 66-67;

fig. 1. Thus, both embodiments of Cenís's liner bushing are incapable of rotation in the fixture in which they are mounted (plate 14).²

In order for Cenís's liner bushing 21 to be capable of rotationally engaging plate 14, it would have to be modified, such as by not installing it with adhesive, or by reducing the size so that it is not press fit. However, because modification of the reference is not permissible in an anticipation rejection, we agree with Appellant (App. Br. 7-9) that Cenís does not anticipate claim 12. The rejection of claims 13-16, 18, and 20-22 is also in error by virtue of their dependence from claim 12.

Rejection of claims 12-14, 18, and 20-22 as anticipated by Ball

The Examiner found that Ball discloses a reamer bushing (housing 20) that is mounted in a fixture (end cap 60) and has recesses (plurality of internal flutes 25) capable of receiving the flutes of at least two different diameter rotatable bone reamers. Ans. 4-5, 10-11. Appellant contends Ball's reamer bushing (housing 20) that is mounted in a fixture (end cap 60) is not capable of use with bone reamers. App. Br. 9-10.

Ball discloses a cutting device 100 that includes a housing 20 having a plurality of internal flutes 25 in its increased diameter portion 21. Ball 2, paras. [0034], [0036]; figs. 4, 6. Internal flutes 25 extend longitudinally from the reduced diameter cavity 26 of housing 20 to end cap 60. Ball, fig.

² The Examiner finds that "Cenís teaches that the bushing may, but not shall, be press-fitted or glued to the plate", implying that the liner may not be secured within the aperture. Ans. 7 (citing to column 1, lines 10-13 of Cenís). The portion of Cenís which the Examiner cites, states, "[t]he liner may be press fitted into the aperture or held in the tooling plate by potting in a resinous material...." Cenís, col. 1, ll. 12-14. Contrary to the Examiner's finding, Cenís discloses that the liner may be secured by one of two methods, and does not disclose that the liner may be unsecured within the aperture.

3. Given this configuration, a bone reamer received in the recesses (internal flutes 25) of Ball's reamer bushing (housing 20) would be trapped internally between reduced diameter cavity 26 and end cap 60. We fail to see, and the Examiner has failed to explain, how a bone reamer disposed within the assembly of Ball would be able of use as a bone reamer for reaming a bone canal.

The rejection of claims 13-14, 18, and 20-22 is also in error by virtue of their dependence from claim 12.

Rejection of claims 23 and 24 under 35 U.S.C. § 103(a) as unpatentable over Cenis

Claims 23 and 24 depend indirectly from claim 12. The rejection of claims 23 and 24, like the rejection of claim 12 as anticipated by Cenis, is based upon the incorrect finding of fact that Cenis's reamer bushing is capable of rotation within the fixture in which it is mounted. Ans. 5-6. For the reasons explained in the analysis of claim 12, *supra*, the rejection of claims 23 and 24 is also in error.

CONCLUSION

Cenis does not disclose a reamer bushing mounted in a fixture capable of rotation in that fixture as called for in claim 12.

Ball does not disclose a housing and end cap capable of use with bone reamers.

DECISION

We REVERSE the Examiner's decision to reject claims 12-16, 18, and 20-24.

REVERSED

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LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK
600 SOUTH AVENUE WEST
WESTFIELD NJ 07090